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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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12 BERNARD T. FLORES, AND
13 BENJAMIN T. FLORES,

14 Plaintiffs,

15 v.
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17 WELLS FARGO BANK, N.A., et al.,

18 Defendants.
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Case No.: C-13-2410 JSC

**ORDER REASSIGNING AND
REPORT AN RECOMMENDATION
TO DISMISS ACTION WITHOUT
PREJUDICE**

20 Defendant Wells Fargo Bank, NA (“Wells Fargo”) removed this action from the San
21 Mateo County Superior Court on May 28, 2013 based on diversity jurisdiction. (Dkt. No. 1.)
22 On June 18, 2013, Wells Fargo moved to dismiss the complaint for failure to state a claim
23 upon which relief could be granted. (Dkt. No. 8.) Plaintiffs failed to file an opposition or
24 statement of non-opposition as required by Local Rule 7-3 so the Court issued an Order to
25 Show Cause as to why the action should not be dismissed for failure to prosecute pursuant to
26 Federal Rule of Civil Procedure 41(b). (Dkt. No. 10.) Plaintiffs failed to timely respond to
27 the Court’s Order; instead, Plaintiffs, through counsel, moved to voluntarily dismiss the case
28 on July 24, 2013. (Dkt. No. 11.)

United States District Court
Northern District of California

1 The Court did not grant Plaintiffs' motion because it had come to the Court's attention
2 that Plaintiffs' counsel, Linda Z. Voss, was suspended from practice in this Court on an
3 interim basis on June 3, 2013. *See In re: Linda Z. Voss*, No. 13-mc-80120-WHA, Dkt. No. 1.
4 This suspension became final on July 18, 2013. *Id.* at Dkt. No. 2. As far as the Court is
5 aware, Counsel Voss has not challenged this suspension in any way. Nor has Voss given
6 notice of her suspension in this action or any of the many other actions which she has pending
7 in the District Court for the Northern District of California. *See, e.g., Copper Hill, Inc. v.*
8 *Pagtalunan et al.*, No. 13-cv-01345-LB; *AH4R-CA, LLC v. De Leon et al.*, No. 13-cv-01667-
9 *WHO; Lampa-De Leon et al. v. Deutsche Bank, NTC*, No. No. 13-cv-01709-LB; *Granite*
10 *Ranch Opportunities, LLC v. Hecker*, No. 13-cv-02966-WHO; *Caballero et al v. Bank of New*
11 *York Mellon*, No. 13-cv-03178-EMC; *Garcia et al v. Aurora Loans Services et al.*, No. 13-cv-
12 03028-PSG.

13 The Court thus ordered counsel Voss to personally appear and show cause as to
14 whether the motion for voluntarily dismissal she filed on Plaintiffs' behalf was filed with their
15 consent and whether they had notice of her suspension from practice. (Dkt. No. 13.) Counsel
16 Voss was also ordered to show cause as to why she should not be referred to the California
17 State Bar based on the fact that she has continued to file pleadings in this Court despite the
18 fact that she had been suspended from practice, failed to provide the Court with notice of her
19 suspension, and failed to substitute counsel or make other arrangements regarding
20 representation of her clients. Counsel Voss was ordered to serve a copy of the Order to Show
21 Cause on Plaintiffs individually and file proof of service with this Court within seven days.

22 Counsel Voss failed to file the proof of service within seven days, although she did
23 personally appear at the Order to Show Cause hearing on August 15, 2013. At the hearing,
24 Counsel Voss conceded that she had case management issues, but represented that her clients,
25 the Plaintiffs here, had been informed of her suspension from practice, this Court's Order to
26 Show Cause, and the motion to voluntarily dismiss this action. Counsel Voss represented to
27 the Court that she would file proof of service to this effect with seven days. To date, Counsel
28 Voss has failed to file anything further in this action. The Court thus issued an Order

1 referring her to the State Bar of California based on her repeated failures to comply with this
2 Court's Orders and her apparent failure to comply with her professional and ethical
3 responsibilities to provide competent representation to her clients, and keep her clients
4 informed about significant developments in this and likely other actions.

5 With respect to Defendant Wells Fargo's pending motion to dismiss, as Plaintiffs
6 have neither consented to nor declined the undersigned magistrate judge's jurisdiction, the
7 Clerk of the Court is ordered to reassign this action to a district court judge. Based on the
8 foregoing, this Court RECOMMENDS that the newly assigned district judge DISMISS this
9 action without prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure
10 41(b).

11 Defendant Wells Fargo Bank, N.A. shall serve this Order on Plaintiffs Bernard T.
12 Flores and Benjamin T. Flores at their last known address and file proof of service with this
13 Court within seven days.

14 Any party may file objections to this report and recommendation with the district
15 court judge within fourteen days after being served with a copy. *See* 28 U.S.C.
16 §636(b)(1)(B); Fed. R. Civ. P. 72(b); Civil L.R. 72-3. Failure to file objections within the
17 specified time may waive the right to appeal the district court's ultimate Order.

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19 **IT IS SO ORDERED.**

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21 Dated: September 23, 2013

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23 JACQUELINE SCOTT CORLEY
24 UNITED STATES MAGISTRATE JUDGE
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